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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT J. DAVIDSON

Appeal 2011-007933
Application 09/760,242[1]
Technology Center 2400

Before CAROLYN D. THOMAS, ANDREW CALDWELL, and JOHN A. EVANS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The real party in interest is Seagate Technology LLC.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-5, 8, 9, 11-15, 19, 20, 24-26, 32, and 37-39, which are all the claims remaining in the application. Claims 6, 7, 10, 16-18, 21-23, 27-31, and 33-36 are cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to portable entertainment media storage devices. *See* Spec., 1.

Claim 1 is illustrative:

> 1. A method of portably handling entertainment media comprising:
>
> storing in a memory of a portable digital storage module non-encoded entertainment media that is not encoded with any authorized usage condition; and
>
> after the storing step is completed, encoding the portable digital storage module with access instructions defining a prescribed authorized usage condition of the stored non-encoded entertainment media.

Appellant appeals the following rejections:

R1. Claims 1-5, 8, 19, 20, 24, 25, 32, 37, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chung (US 6,628,963 B1, Sep. 30, 2003) and Kawakami (US 7,266,202 B1, Sep. 4, 2007);

R2. Claims 9 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chung, Kawakami, and Katayama (US 6,651,212 B1,

Nov. 18, 2003);

R3. Claims 11-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chung, Kawakami, Katayama, and Gibson (US 5,557,596, Sep. 17, 1996);

R4. Claims 26 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chung, Kawakami, and Downs (US 6,226,618 B1, May 1, 2001).

Claim Groupings

Based on Appellant's arguments in the Appeal Brief, we will decide the appeal on the basis of claims as set forth below. *See* 37 C.F.R. 41.37(c)(1)(vii).

ANALYSIS

Claims 1 and 9

Issue: Did the Examiner err in finding that the cited art, particularly Kawakami, teaches and/or suggests "storing in a memory . . . non-encoded entertainment media that is not encoded with any authorized usage condition", as claimed?

Appellant contends that "Kawakami explicitly discloses the data transferred to the portable device is in the form of a packet composed of a header and a content, the header defining the usage condition information" (*Id.* at 9.) Appellant further contends that "the content referred to in block S59 of Fig. 13 is previously selected in block S54 and then paired with its corresponding usage rule file in block S55 before being transferred" (Reply Br. 4).

The Examiner found that "Kawakami explicitly shows in Fig. 13 and 19, where the content data is transferred to the portable devices first, and after the content data is stored in the portable device (steps 59-60 and 119-120), the usage conditions are then transferred and stored into the portable device (steps 61-64 and 122-123)" (Ans. 17). The Examiner further found that "[t]he content data and usage data are explicitly disclosed as being separate files which are separately processed and transferred" (*id.* at 18). We agree with the Examiner.

Here, the Examiner relies upon Kawakami to disclose the argued limitation. Therefore, our discussion will be limited thereto.

Fig. 13 of Kawakami is depicted below:

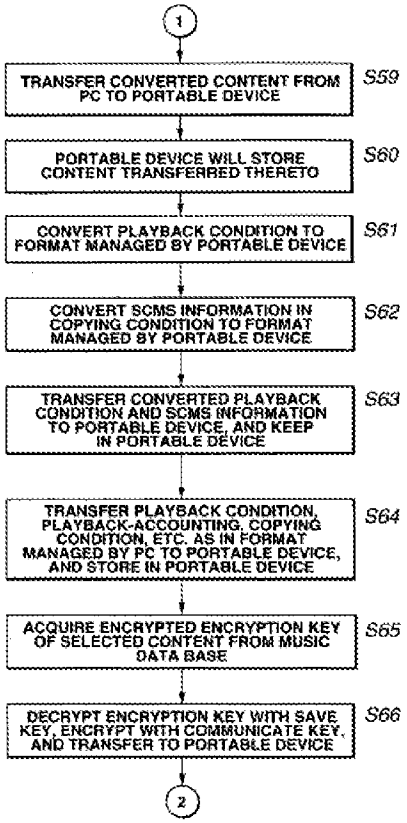

FIG.13

Fig. 13 of Kawakami illustrates a flow chart of the movement of content from the HDD to a portable device.

As noted above, Kawakami discloses that "[a]t step S**59**, the move management program **134** will make the PD driver **143** transfer the content converted at S**58** to the portable device **6** via the USB port **23**. . . . and stores it as it is into the flash memory **61**." (Kawakami, col. 27, ll. 49-54.) Kawakami further discloses "[t]hen at step S**63**, the move management program **134** makes the PD driver **143** transfer to the portable device 6 the playback condition . . . The CPU 53 of the portable device 6 saves the transferred playback condition . . . into the flash memory **61**." (*Id.* at col. 27, l. 64 to col. 28, l. 3.)

In other words, Kawakami discloses first transferring content to the portable device, then transferring the playback condition to the portable device. Therefore, we agree with the Examiner that Kawakami discloses transferring and processing the content data and the usage rules separately (*see* Ans. 18).

While Kawakami discloses the following: "A data to be transferred to the portable device **6** is composed of a header and content. The header stores . . . a playback limitation data" (*see* Kawakami, col. 10, ll. 32-36), we find that Kawakami stops short of disclosing that the content and usage information is transferred together as contended by Appellant, particularly given Kawakami's Fig. 13 illustration which explicitly discloses usage rules being transferred *after* the content information. We further add that if a header containing usage rules was transferred with the content as alleged by Appellant then a further step transferring usage rules (i.e. S**63**) would not be

necessary. Stated differently, if Kawakami's usage rules were encoded with the content than a later transfer step, e.g., S**63**, would not be required. Instead, an extraction step would follow, i.e., extracting the usage rules from the header. As this is not the case in Kawakami's Fig. 13, we find Appellant's arguments unpersuasive that Kawakami's content was encoded in a header containing usage rules.

Claims 2-5, 8, 11-15, 19, 20, 24-26, 32, and 37-39

Appellant reproduces other limitations from the claims in the Appeal Brief, but alleges error in their rejection by relying on the same position regarding the supposed deficiencies of Kawakami, i.e., it only transfers encoded entertainment media, that we have found untenable (*see* App. Br. 16-23). Appellant's additional remarks are not separate arguments for patentability under the applicable rules. *See* 37 C.F.R. § 41.37(c)(1)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."). To the extent that any of Appellant's additional remarks in the Appeal Brief could be considered to rise to the level of providing arguments for separate patentability, we refer to the Examiner's findings in the Answer as a complete response to any such arguments.

In view of the above discussion, since Appellant has not demonstrated that the Examiner erred in finding the argued limitations in the disclosure of Kawakami, the Examiner's 35 U.S.C. § 103(a) rejections of representative independent claim 1, as well as claims 2-5, 8, 9, 11-15, 19, 20, 24-26, 32, and 37-39 not separately argued by Appellant, are sustained.

DECISION

We affirm each of the Examiner's § 103(a) rejections.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) .

AFFIRMED

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